

**Notice of Allowability**

Application No.

09/852,831

Applicant(s)

GUTIERREZ ET AL.

Examiner

James A. Kramer

Art Unit

3627

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Decision by the Board of Patent Appeals and Interferences mailed 4/28/06.
2. ☒ The allowed claim(s) is/are 1-26.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date _____    | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert Wilder on November 14, 2006.

The application has been amended as follows:

Reference the claims presented with the Appeal Brief filed 11/28/04.

#### **Amend claim 1 as follows:**

In line 307, the language "an extension" was changed to: - - a seller has authorized a predetermined number of extensions - -

In line 308, the language "was authorized by a seller" has been deleted.

In line 312 after "said auction period", the language - - up to the predetermined number of extensions - - was added.

In lines 312-313 the language "automatically extending said auction period if said extension of said auction period was authorized" was changed to - - automatically extending said auction period up to the predetermined number of extensions if said extensions of said auction period were authorized."

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**Amend claim 14 as follows:**

In line 379, the language “an extension” was changed to: - - a seller has authorized a predetermined number of extensions - -

In line 379-380, the language “was authorized by a seller” has been deleted.

In line 312 after “said auction period”, the language - - up to the predetermined number of extensions - - was added.

In lines 384-385 the language “automatically extending said auction period if said extension of said auction period was authorized” was changed to - - automatically extending said auction period up to the predetermined number of extensions if said extensions of said auction period were authorized.”

The following is an examiner’s statement of reasons for allowance:

Examiner notes that the present invention is patentable over US Patent number 6,230,147 to Alaia et al. for at least the reasons set forth by the Board of Patent Appeals and Interferences in the Decision mailed 4/28/06.

Following the decision by the Board of Patent Appeals and Interferences the Examiner performed an updated search. This search yielded US Patent Application Number 2002/0103740 to Maroney. Examiner notes that the present invention is patentable over Maroney because the “overtime” of Maroney is not an extension of the auction period but rather a second phase which is limited to a private negotiation between one buyer and the seller.

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In addition, to the above reasons for allowance the Examiner further notes that neither Maroney nor Alaia teaches a set predetermined number of overtime extensions. Both reference teach continued overtimes until a sale is consummated. The amendment made to the claims in this Action requires the seller to predetermine a set number of authorized overtime sessions.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (571) 272 6783. The examiner can normally be reached on Monday - Thursday (8AM - 5PM).

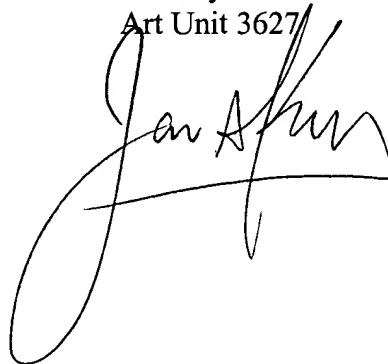
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272 6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

James A. Kramer  
Primary Examiner  
Art Unit 3627

jak

A large, stylized handwritten signature in black ink, likely belonging to James A. Kramer, written over the printed name and title.

11/19/06